IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(HMA) No. 282 of 2001.

Judgement reserved on: 27.6.2007.

Date of decision: 1.8.2007.

Geeta Ram Verma ….. **Appellant-petitioner.**

Vs.

Smt. Swaran Lata …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. RomeshVerma, Advocate.

For the Respondent :

Kuldip Singh, Judge.

The petitioner- husband is in appeal against the judgement and decree, dated 22.5.2001, passed by the learned Additional District Judge, Shimla in HMA No. 17-S/3 of 1996, dismissing the petition of the petitioner-husband seeking decree of divorce, under Section 13 of the Hindu Marriage Act, 1955 (for short the Act). The parties are referred in the same manner, as in the trial court.

2. The facts in brief are that parties were married on 28.4.1961 at Naraingarh, District Ambala and settled in the year 1962 at Dadahu, District Sirmour, thereafter they lived together at different

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Whether the reporters of the local papers may be allowed to see the Judgment?

places for the reason that husband was working in Himachal Pradesh Police. From the marriage, one son Dr. Shyam Verma was born on 2.4.1964 and a daughter Mrs. Shashi was born on 22.5.1966, both the children are married and well settled.

3. The petitioner has alleged that after the birth of the children the respondent-wife has adopted hostile, evasive attitude towards him. She used to pick up quarrels on small issues. The petitioner was compelled to tolerate the behaviour of respondent with the hope that better sense would prevail upon her and she would settle down with the passage of time. The respondent, however, did not improve. She treated the petitioner with cruelty, both physical and mental. She levelled allegations of adultery against the petitioner. She lodged false and fictitious complaints against the petitioner to the higher authorities of the petitioner. She lodged proceedings, under Section 107, Cr.P.C. against the petitioner before Sub Divisional Magistrate, Nahan. She also filed a complaint against petitioner, under Section 498-A, IPC before Judicial Magistrate, Ist Class, Court No.2, Shimla. She refused to cohabit with the petitioner and deserted him. The petitioner started paying Rs. 800/- per month maintenance with effect from 1.8.1995. On these grounds, the petitioner filed a petition against the respondent for dissolution of their marriage by a decree of divorce.

4. The respondent contested the petition by filing reply. She denied the allegations levelled against her by the petitioner. She has submitted that after the marriage the petitioner without any reason started harassing her as well as her son. He did not provide

maintenance to respondent. She was given physical beatings several times. She tried to settle down and was always ready and willing to live with him. She was humiliated and insulted in public places several times. She was compelled to file proceedings, under Section 107, Cr.P.C. against the petitioner. The petitioner did not care to give her day to day expenses. The maintenance of Rs. 800/- per month, as ordered by the A.D.G.P., Police, was to be paid by the petitioner, but after his retirement he had not paid even a single penny to her. The respondent denied the jurisdiction of the court at Shimla to try the petition. The learned Additional District Judge dismissed the petition. Hence, the petitioner is in appeal in this court.

5. I have heard the learned counsel for the appellant-petitioner and gone through the record.

6. The learned counsel for the petitioner has submitted that learned Additional District Judge has misconstrued, misinterpreted the pleadings and material on record. There is break down of the marriage. In these circumstances, the petitioner is entitled to a decree of divorce by dissolving the marriage of the parties.

7. PW 1 Roshan Lal, ASI, Police Station, Renuka has proved daily dairy report No.4, dated 21.9.1995, copy Ex. PW 1/A, which was recorded at the instance of Smt. Swaran Lata. PW 2 Suresh Kumar has proved FIR Ex. PW 2/A and copy of *Rojnamcha,* Ex. PW 2/B. The FIR was got registered at the instance of Smt.Swaran Lata. PW 3 Karnail Singh has proved complaints Exts. PW 3/A, PW 3/B, PW 3/C, PW 3/D and PW 3/E of Smt. Swaran Lata. He has also proved copy of statement of Geeta Ram Ex. RX. PW 4

Sita Ram is the brother of petitioner Geeta Ram. He has stated that relations between the parties are not good. The behaviour of respondent towards the petitioner was not good since very beginning. He has admitted that respondent lodged an FIR against him. He has admitted that Ex. PW 1/A was lodged by the respondent against his wife Smt. Krishna. He has denied that in order to help his brother he has deposed against the respondent. PW 5 Geeta Ram has stated that they were married on 28.4.1961. The respondent had hostile attitude towards him since the time they were married. The respondent quarreled with him after November, 1991 when their son was married. In December, 1992, she levelled allegations of illicit relations against him. In July, 1996, he took voluntary retirement, because respondent lodged false complaints against him before the higher officers. The officers used to ridicule him due to false complaints. She filed a case against him, under Section 498-A, 323, 506 IPC as well as proceedings, under Sections 107/150, Cr.P.C. at Nahan. After November, 1992, they lived under one roof but in different rooms. In cross-examination, he has stated that he was not prepared to keep the respondent even if she was ready to live with him. He has admitted that he did not file any appeal against the complaints Ext. PW 3/A to Ex. PW 3/E. He has admitted that his statement Ex. RX was recorded before the Additional District Judge on 21.8.1995. He has admitted that in FIR No. 224/95, Ex. PW 2/A, he was convicted. He has stated that Ex. PW 5/A was delivered to him in November, 1993. He has denied that this letter was not written by the brother of the respondent and this letter was fabricated.

8. Smt. Swaran Lata has appeared as her own witness and stated that she was living with her son at Solan, because her husband was not ready to keep her, whereas she wants to live with him. She has no source of income. The petitioner settled the matter by making statement Ex. RX. Letter Ex. PW 3/A was not written by her. The petition has been filed against her only to harass her. In cross-examination, she has denied that complaints Exts. PW 3/A, PW 3/B, PW 3/C, PW 3/D and PW 3/E were lodged by her. She has, however, stated that she orally lodged one complaint and that was compromised in the form of Ex. RX. She is illiterate and very rarely signs, but generally puts her thumb mark. She has denied that Ex. PW 3/D and Ex. PW 3/E, were written by her. She has denied her signatures on Ex. PW 3/A. She has denied that she filed complaint against the petitioner, vide Ex. PW 1/A. She has denied that false allegations were levelled against the petitioner. She has denied that she ever ill-treated the petitioner.

9. The petitioner has levelled vague allegations of cruelty against the respondent. As per Rule 5 (iv) of Hindu Marriage and Divorce (Himachal Pradesh) Rules, 1982, the petitioner is required to plead specific acts of cruelty with supporting affidavit under Rule 6 (A). The petitioner has not pleaded specific acts of cruelty as per Rule 5 (iv), only vague allegations have been made in the petition, which are not as per requirement of Rule 5 (iv). The petitioner has not filed supporting affidavit alongwith petition covering the allegations of cruelty. The affidavit filed by petitioner in support of petition is also not in accordance with Rule 6(A). In evidence the petitioner has

brought on record complaints Ex. PW 3/A to Ex. PW 3/E, but he has failed to prove that these complaints were lodged by the respondent herself or at her instance by somebody else. The respondent has specifically denied having lodged complaints Ex. PW 3/A to Ex. PW 3/E. It has come on record that respondent filed complaint, under Section 498-A, IPC etc. against the petitioner. The petitioner has admitted that he was convicted in Section 498-A, IPC case. Therefore, it cannot be said that the complaint on the basis of which the petitioner was prosecuted and convicted was false. The respondent has submitted that she wants to live with the petitioner, but for one reason or the other the petitioner is not ready to keep her. The petitioner has admitted compromise Ex. RX. The perusal of Ex. RX reveals that the dispute between the parties was settled. The parties were married in the year 1961. They have grown up children, who are also married and settled. The submission of the learned counsel for the petitioner- appellant that there is break down of the marriage between the parties, and, therefore, the marriage should be dissolved is noticed only to be rejected. The petitioner has alleged ill-treatment on the part of the respondent, which he has miserably failed to prove. The respondent is living with her son at Solan. The children of the parties have not supported the petitioner. This gives an indication that respondent is not at fault. The petitioner has even admitted his conviction, under Section 498-A, IPC. In these circumstances, the petitioner cannot be permitted to take benefit of his own wrong and to say that there is break down of marriage and marriage between the parties may be dissolved by a decree of

divorce. The parties have now crossed the age of resettlement in life and for this reason also no purpose will be served in case divorce is granted to them at this age. The court below has considered the material on record rightly. The learned counsel for the petitioner has failed to point out how the learned Additional District Judge has misconstrued, misinterpreted the pleadings and material on record. No case for interference has been made out.

10. No other point was urged.

11. The result of the above discussion, the appeal is dismissed.

August 1,2007. **(Kuldip Singh)**
(*Hem*) **Judge.**